

Senate File 169 - Enrolled

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SENATE FILE 169

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AN ACT

RELATING TO THE REGULATION OF SUBSTANCES WHICH ARE PRECURSORS
TO AMPHETAMINE AND METHAMPHETAMINE AND PROVIDING A PENALTY
AND EFFECTIVE DATES.

1 8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
1 9

1 10 Section 1. Section 124.212, subsection 4, Code 2005, is
1 11 amended by striking the subsection and inserting in lieu
1 12 thereof the following:

1 13 4. PRECURSORS TO AMPHETAMINE AND METHAMPHETAMINE. Unless
1 14 specifically excepted in paragraph "d" or "e" or listed in
1 15 another schedule, any material, compound, mixture, or
1 16 preparation which contains any quantity of the following
1 17 precursors to amphetamine or methamphetamine, including their
1 18 salts, optical isomers, and salts of their optical isomers:

1 19 a. Ephedrine.

1 20 b. Phenylpropanolamine.

1 21 c. Pseudoephedrine. A person shall not purchase more than
1 22 seven thousand five hundred milligrams of pseudoephedrine,
1 23 either separately or collectively, within a thirty-day period
1 24 from a pharmacy, unless the person has a prescription for a
1 25 pseudoephedrine product in excess of that quantity.

1 26 d. Any product that contains three hundred sixty
1 27 milligrams or less of pseudoephedrine, its salts, optical
1 28 isomers, and salts of its optical isomers, which is in liquid,
1 29 liquid capsule, or liquid-filled gel capsule form, is excepted
1 30 from this schedule and may be warehoused, distributed, and
1 31 sold over the counter pursuant to section 126.23A.

1 32 e. A pseudoephedrine product warehoused by a distributor
1 33 located in this state which is warehoused for export to a
1 34 retailer outside this state is excepted from this schedule. A
1 35 distributor warehousing and exporting a pseudoephedrine
2 1 product shall register with the board and comply with any
2 2 rules adopted by the board and relating to the diversion of
2 3 pseudoephedrine products from legitimate commerce.

2 4 Sec. 2. NEW SECTION. 124.213 PHARMACY PSEUDOEPHEDRINE
2 5 SALE RESTRICTION == PENALTY.

2 6 A person who purchases more than seven thousand five
2 7 hundred milligrams of pseudoephedrine from a pharmacy in
2 8 violation of section 124.212 or a retailer in violation of
2 9 section 126.23A, either separately or collectively, within a
2 10 thirty-day period commits a serious misdemeanor.

2 11 Sec. 3. Section 126.23A, Code 2005, is amended by striking
2 12 the section and inserting in lieu thereof the following:

2 13 126.23A PSEUDOEPHEDRINE RETAIL RESTRICTIONS.

2 14 1. a. A retailer or an employee of a retailer shall not
2 15 do any of the following:

2 16 (1) Sell a product that contains more than three hundred
2 17 sixty milligrams of pseudoephedrine in violation of section
2 18 124.212, subsection 4.

2 19 (2) Knowingly sell more than one package of a product
2 20 containing pseudoephedrine to a person in a twenty-four-hour
2 21 period.

2 22 (3) Sell a package of a pseudoephedrine product that can
2 23 be further broken down or subdivided into two or more separate
2 24 and distinct packages or offer promotions where a
2 25 pseudoephedrine product is given away for free as part of any
2 26 purchase transaction.

2 27 b. A retailer or an employee of a retailer shall do the
2 28 following:

2 29 (1) Provide for the sale of a pseudoephedrine product in a
2 30 locked cabinet or behind a sales counter where the public is
2 31 unable to reach the product and where the public is not
2 32 permitted.

2 33 (2) Require a purchaser to present a government-issued
2 34 photo identification card identifying the purchaser prior to
2 35 purchasing a pseudoephedrine product.

3 1 (3) Require the purchaser to legibly sign a logbook and to
3 2 also require the purchaser to print the purchaser's name and
3 3 address in the logbook.

3 4 (4) Determine the signature in the logbook corresponds
3 5 with the name on the government-issued photo identification

3 6 card.
3 7 (5) Keep the logbook twelve months from the date of the
3 8 last entry.
3 9 (6) Provide notification in a clear and conspicuous manner
3 10 in a location where a pseudoephedrine product is offered for
3 11 sale stating the following:
3 12 Iowa law prohibits the over-the-counter purchase of more
3 13 than one package of a product containing pseudoephedrine in a
3 14 twenty-four-hour period or of more than seven thousand five
3 15 hundred milligrams of pseudoephedrine within a thirty-day
3 16 period. If you purchase a product containing pseudoephedrine,
3 17 you are required to sign a logbook which may be accessible to
3 18 law enforcement officers.
3 19 2. A purchaser shall not do any of the following:
3 20 a. Purchase more than one package of a pseudoephedrine
3 21 product within a twenty-four-hour period from a retailer.
3 22 b. Purchase more than seven thousand five hundred
3 23 milligrams of pseudoephedrine from a retailer, either
3 24 separately or collectively, within a thirty-day period.
3 25 3. A purchaser shall legibly sign the logbook and also
3 26 print the purchaser's name and address in the logbook.
3 27 4. Enforcement of this section shall be implemented
3 28 uniformly throughout the state. A political subdivision of
3 29 the state shall not adopt an ordinance regulating the display
3 30 or sale of products containing pseudoephedrine. An ordinance
3 31 adopted in violation of this section is void and unenforceable
3 32 and any enforcement activity of an ordinance in violation of
3 33 this section is void.
3 34 5. The logbook may be kept in an electronic format upon
3 35 approval by the department of public safety.
4 1 6. A pharmacy that sells a product that contains three
4 2 hundred sixty milligrams or less of pseudoephedrine on a
4 3 retail basis shall comply with the provisions of this section
4 4 with respect to the sale of such product. However, a pharmacy
4 5 is exempted from the provisions of this section when selling a
4 6 pseudoephedrine product pursuant to section 124.212.
4 7 7. A retailer or an employee of a retailer that reports to
4 8 any law enforcement agency any alleged criminal activity
4 9 related to the purchase or sale of pseudoephedrine or who
4 10 refuses to sell a pseudoephedrine product to a person is
4 11 immune from civil liability for that conduct, except in cases
4 12 of willful misconduct.
4 13 8. If a retailer or an employee of a retailer violates any
4 14 provision of this section, a city or county may assess a civil
4 15 penalty against the retailer upon hearing and notice as
4 16 provided in section 126.23B.
4 17 9. An employee of a retailer who commits a violation of
4 18 subsection 1 or a purchaser who commits a violation of
4 19 subsection 2 commits a simple misdemeanor punishable by a
4 20 scheduled fine under section 805.8C, subsection 6.
4 21 10. As used in this section, "retailer" means a person or
4 22 business entity engaged in this state in the business of
4 23 selling products on a retail basis. An "employee of a
4 24 retailer" means any employee, contract employee, or agent of
4 25 the retailer.
4 26 Sec. 4. NEW SECTION. 126.23B CIVIL PENALTY.
4 27 1. A city or a county may enforce section 126.23A, after
4 28 giving the retailer an opportunity to be heard upon ten days'
4 29 written notice by restricted certified mail stating the
4 30 alleged violation and the time and place at which the retailer
4 31 may appear and be heard.
4 32 2. For a violation of section 126.23A by the retailer or
4 33 an employee of the retailer a civil penalty shall be assessed
4 34 against the retailer as follows:
4 35 a. For a first violation, the retailer shall be assessed a
5 1 civil penalty in the amount of three hundred dollars.
5 2 b. For a second violation within a period of two years,
5 3 the retailer shall be assessed a civil penalty in the amount
5 4 of one thousand five hundred dollars.
5 5 c. For a third violation within a period of three years,
5 6 the retailer shall be assessed a civil penalty in the amount
5 7 of two thousand dollars. The retailer may also be prohibited
5 8 from selling pseudoephedrine for up to three years from the
5 9 date of assessment of the civil penalty.
5 10 d. For a fourth or subsequent violation within a period of
5 11 three years, the retailer shall be assessed a civil penalty in
5 12 the amount of three thousand dollars. On a fourth or
5 13 subsequent violation, the retailer shall be prohibited from
5 14 selling pseudoephedrine products for three years from the date
5 15 of the assessment of the civil penalty.
5 16 3. The city or county that takes legal action against a

5 17 retailer under this section shall report the assessment of a
5 18 civil penalty to the department of public safety within thirty
5 19 days of the penalty being assessed.

5 20 4. The civil penalty shall be collected by the clerk of
5 21 the district court and shall be distributed as provided in
5 22 section 602.8105, subsection 4.

5 23 Sec. 5. Section 602.8105, subsection 4, Code 2005, is
5 24 amended to read as follows:

5 25 4. The clerk of the district court shall collect a civil
5 26 penalty assessed against a retailer pursuant to section
5 27 ~~126.23A~~ 126.23B. Any moneys collected from the civil penalty
5 28 shall be distributed to the ~~state or a political subdivision~~
~~5 29 of the state as provided in city or county that brought the~~
5 30 ~~enforcement action for a violation of section 126.23A,~~

~~5 31 subsection 7.~~

5 32 Sec. 6. Section 714.7C, Code 2005, is amended to read as
5 33 follows:

5 34 714.7C THEFT OF PSEUDOEPHEDRINE == ENHANCEMENT.

5 35 Notwithstanding section 714.2, subsection 5, a person who
6 1 commits a simple misdemeanor theft of ~~more than two packages a~~
6 2 ~~product containing any of the following pseudoephedrine from a~~
6 3 ~~retailer as defined in section 126.23A~~ commits a serious

6 4 misdemeanor+.

6 5 1. ~~Pseudoephedrine as the product's sole active~~
6 6 ~~ingredient.~~

6 7 2. ~~Pseudoephedrine in combination with other active~~
6 8 ~~ingredients.~~

6 9 ~~A simple misdemeanor theft of more than two packages~~
6 10 ~~containing pseudoephedrine as the products' sole active~~
6 11 ~~ingredient which are in liquid form does not constitute a~~
6 12 ~~serious misdemeanor under this section.~~

6 13 Sec. 7. Section 804.21, subsection 1, Code 2005, is
6 14 amended to read as follows:

6 15 1. A person arrested in obedience to a warrant shall be
6 16 taken without unnecessary delay before the nearest or most
6 17 accessible magistrate. The officer shall at the same time
6 18 deliver to the magistrate the warrant with the officer's
6 19 return endorsed on it and subscribed by the officer with the
6 20 officer's official title. However, this section, and sections
6 21 804.22 and 804.23, do not preclude the release of an arrested
6 22 person within the period of time the person would otherwise
6 23 remain incarcerated while waiting to be taken before a
6 24 magistrate if the release is pursuant to pretrial release
6 25 guidelines or a bond schedule promulgated by the judicial
6 26 council, unless the person is charged with manufacture,
6 27 delivery, possession with intent to deliver, or distribution
6 28 of methamphetamine. If, however, a person is released

6 29 pursuant to pretrial release guidelines, a magistrate must,
6 30 within twenty-four hours of the release, or as soon as
6 31 practicable on the next subsequent working day of the court,
6 32 either approve in writing of the release, or disapprove of the
6 33 release and issue a warrant for the person's arrest.

6 34 Sec. 8. Section 804.22, unnumbered paragraph 2, Code 2005,
6 35 is amended to read as follows:

7 1 This section and the rules of criminal procedure do not
7 2 affect the provisions of chapter 805 authorizing the release
7 3 of a person on citation or bail prior to initial appearance,

7 4 ~~unless the person is charged with manufacture, delivery,~~
7 5 ~~possession with intent to deliver, or distribution of~~

7 6 ~~methamphetamine.~~ The initial appearance of a person so
7 7 released shall be scheduled for a time not more than thirty
7 8 days after the date of release.

7 9 Sec. 9. Section 805.8C, subsection 6, Code 2005, is
7 10 amended by striking the subsection and inserting in lieu
7 11 thereof the following:

7 12 6. PSEUDOEPHEDRINE SALES VIOLATIONS. For violations of
7 13 section 126.23A, subsection 1, by an employee of a retailer,
7 14 or for violations of section 126.23A, subsection 2, by a
7 15 purchaser, the scheduled fine is as follows:

7 16 a. If the violation is a first offense, the scheduled fine
7 17 is one hundred dollars.

7 18 b. If the violation is a second offense, the scheduled
7 19 fine is two hundred fifty dollars.

7 20 c. If the violation is a third or subsequent offense, the
7 21 scheduled fine is five hundred dollars.

7 22 Sec. 10. Section 811.2, subsection 1, unnumbered paragraph
7 23 2, Code 2005, is amended to read as follows:

7 24 Any bailable defendant who is charged with unlawful
7 25 possession, manufacture, delivery, or distribution of a
7 26 controlled substance or other drug under chapter 124 and is
7 27 ordered released shall be required, as a condition of that

7 28 release, to submit to a substance abuse evaluation and follow
7 29 any recommendations proposed in the evaluation for appropriate
7 30 substance abuse treatment. However, if a bailable defendant
7 31 is charged with manufacture, delivery, possession with the
7 32 intent to deliver, or distribution of methamphetamine, its
7 33 salts, optical isomers, and salts of its optical isomers, the
7 34 defendant shall, in addition to a substance abuse evaluation,
7 35 remain under supervision and be required to undergo random
8 1 drug tests as a condition of release.

8 2 Sec. 11. Section 811.2, subsection 3, Code 2005, is
8 3 amended to read as follows:

8 4 3. RELEASE AT INITIAL APPEARANCE. This chapter does not
8 5 preclude the release of an arrested person as authorized by
8 6 section 804.21, unless the arrested person is charged with
8 7 manufacture, delivery, possession with the intent to deliver,
8 8 or distribution of methamphetamine.

8 9 Sec. 12. RETAILER COMPLIANCE. Be it deemed necessary for
8 10 public safety purposes, retailers shall begin to take steps to
8 11 come into compliance with the provisions of this Act as soon
8 12 as possible.

8 13 Sec. 13. DRUG POLICY COORDINATOR == REPORT. The drug
8 14 policy coordinator shall report, in a joint meeting, to the
8 15 committee on judiciary of the senate and the committee on
8 16 public safety of the house of representatives in January 2006
8 17 and in January 2007, the effects of this Act on
8 18 methamphetamine abuse and related criminal activity.

8 19 Sec. 14. EFFECTIVE DATES. This Act takes effect sixty
8 20 days from the date of enactment or July 1, 2005, whichever is
8 21 earlier. However, the portion of the section of this Act
8 22 amending section 124.212, subsection 4, which makes all
8 23 ephedrine products schedule V controlled substances, and the
8 24 sections of this Act amending sections 804.21, 804.22, and
8 25 811.2, take effect upon enactment.

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8 29 _____
8 30 JEFFREY M. LAMBERTI
8 31 President of the Senate

8 32

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8 34 _____
8 35 CHRISTOPHER C. RANTS
8 36 Speaker of the House

9 1

9 2 I hereby certify that this bill originated in the Senate and
9 3 is known as Senate File 169, Eighty-first General Assembly.

9 4

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9 7 _____
9 8 MICHAEL E. MARSHALL
9 9 Secretary of the Senate

9 9 Approved _____, 2005

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9 13 _____
9 14 THOMAS J. VILSACK

9 14 Governor